U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

FEB 22 2008

Mr. Michael L. Dworkin & Associates
Law Offices
465 California Street, Suite 210
San Francisco, CA 94104-1808

Dear Mr. Dworkin,

This responds to your letter dated October 24, 2007, requesting an interpretation of part 121, Appendices I and J, Title 14, Code of Federal Regulations, as they pertain to the FAA Drug and Alcohol Misuse Prevention Programs for employers holding "multiple certificates." You specifically inquire if KaiserAir (Kaiser), which currently holds FAA certification as an Air Carrier (part 135) and an Air Agency (Repair Station, part 145), satisfies the requirements concerning the establishment and maintenance of Drug and Alcohol Misuse Prevention Program by conducting a unified testing program that encompasses both certificates.

Set forth below are pertinent parts of the regulation.

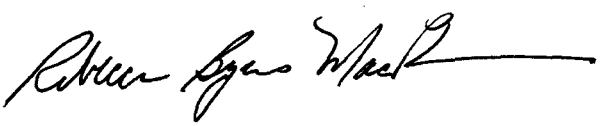
> Appendix I to Part 121, section II
>
> *Employee* is a person who is hired, either directly or by contract, to perform a safety-sensitive function for an employer, as defined below. An employee is also a person who transfers into a position to perform a safety-sensitive function for an employer.
>
> *Employer* is a part 121 certificate holder, a part 135 certificate holder, an operator as defined in §135.1 (c) of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. military. An employer may use a contract employee who is not included under that employer's FAA-mandated antidrug program to perform a safety-sensitive function only if that contract employee is included under the contractor's FAA-mandated antidrug program and is performing a safety-sensitive function on behalf of that contractor (*i.e.*, within the scope of employment with the contractor).
> (See parallel definitions of *Covered Employee* and *Employer* in Appendix J, section D).
>
> Appendix I to Part 121, section V
>
> Each employer shall conduct the following types of testing in accordance with the procedures set forth in this appendix and the DOT "Procedures for Transportation Workplace Drug Testing Programs" (49 CFR part 40).

As noted above under Appendix I, each employer "shall conduct" pertinent testing in accordance with the FAA rules. Thus, as a defined employer, each holder of a part 121 certificate as well as each holder of a part 135 certificate is a separate entity that must implement its own testing program.

While each such 121 or 135 certificate holder has to ensure the testing of all safety-sensitive employees, whether performing directly or by contract, contractor employees may be tested either by the certificate holder under its program or under a testing program of the contractor. In the case of Kaiser, the part 145 repair station is a contractor within the meaning of the drug testing rules to the 135 certificate holder. Therefore, it is permissible for the employees of the repair station to be included under the program of the 135 certificate holder.

This response was prepared by Adrianne Wojcik, an Attorney in the Regulations Division of the Office of the Chief Counsel, and has been coordinated with the Drug Abatement Office. If you have additional questions regarding the matter, please contact us at your convenience at (202) 267-3073.

Sincerely,



Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200